OBEROI IMPERIAL HOTEL

v.

TAN KIAH ENG

COURT OF APPEAL, SINGAPORE
YONG PUNG HOW CJ
CHAN SEK KEONG J
WARREN LH KHOO J
[CIVIL APPEAL NO. 84 OF 1990]
2 JANUARY 1992

TORT: *Injuries suffered while at work - Alterations to the operation of laundry press - Unsafe system of work - Whether there was contributory negligence - Volenti non fit injuria.*

The respondent joined the appellants as laundry operator in 1977. She was educated in a Chinese school up to secondary four. She was employed in the ironing section. She did her ironing work on pressing machines and there were several different models in the laundry room and they were all operated differently. She did not receive any formal training nor was she given any instructions. She learnt the job from her fellow operators and this method of training workers continued right up to the date of accident.

The accident occurred when the respondent was pressing a T-shirt on a hot steam press machine. The system of operation of this machine had been altered. On the day of the accident when she had placed the T-shirt on the top of the ironing board and was smoothening out the material with her right hand, the head buck came down suddenly and scalded her right hand badly. The respondent claimed that there was unsafe system of work as there was an alteration to the original two-handed operation of the laundry press.

The appellants did not dispute the question of liability. Their appeal was solely against the learned Judge's rejection of their claim that the respondent was in some way contributorily negligent.

Held:

[1] The respondent did not subjectively know that the altered operation was dangerous. Whether a reasonable person in her position would have recognised the danger would depend on the facts and circumstances of each case.

[2] Considering the education level of the respondent which could be taken as fairly representative of the average education level of the laundry operators, it would not be reasonable to have expected her to have known of the danger posed by the altered system. It would also be unrealistic to expect an operator in the respondent position to have dissented vigorously and have stopped work or have complained to the laundry manager or assistant engineer. It was not reasonable to expect an operator to make an adverse report against someone higher than her in the hierarchy of the organisation, least of all when the subject-matter of the report was a mechanical matter in which even the laundry manager was assisted by the technician.

[3] The mere continuance in a dangerous situation created by the employer after the commencement of employment does not require of an employee an alertness out of proportion with the status of the job. It would not be fair to expect him to assume the responsibility of supervision which rightfully falls on the employer. The obligation cast on the employee is to take such degree of care as a reasonable person in his position would take for his own safety and in determining what a reasonable person would do, a Court has to look at the

average level of education an employee in that particular job and the status of that particular job. Where the status of the job imposes no duty of supervision, and the employee has neither the educational qualification nor the training to appreciate the danger of his work, the law does not impose upon him the obligation.

[Appeal dismissed with costs.]

Cases referred to:
Smith v. Baker & sons [1981-4] All ER Rep 69 ***(foll)***
Imperial Chemical Industries Ltd. v. Shatwell [1964] 2 All ER 999 ***(not foll)***
Stavely Iron & Chemical Co. Ltd. v. Jones [1956] AC 627 ***(cit)***
Williams v. Port of Liverpool Stevedoring Co. Ltd. [1956] 2 All ER 69 ***(cit)***
Caswell v. Powell Duffryn Associated Collieries Ltd. [1940] AC 152 ***(cit)***
O'Reilly v. National Rail and Tramway Appliances Ltd. [1966] 1 All ER ***(cit)***
Hudson v. Ridge Manufactoring Co. Ltd. [1957] 2 All ER 229 ***(cit)***

For the appellant - N K Pillai; M/s. Harry Elias & Partners
For the respondent - Karuppan Chettiar; M/s. Murphy & Dunbar

JUDGMENT

Yong Pung How CJ:

This was an appeal from the decision of A P Rajah J wherein he found the appellants wholly liable for the injuries suffered by the respondent while at work in the course of her employment in the laundry room at the appellants' hotel. At the end of the hearing, we dismissed the appeal for the reasons that appear below.

The Facts

The facts of this case may be stated shortly. The respondent had been educated in a Chinese school which she had left after completing her secondary four education. She then went through a series of jobs, none of which required much skill, before joining the appellants in July 1977 as a laundry operator. At the date of the accident on 17 June 1983 she was about 34 years of age.

The appellants' hotel employed about 40 laundry operators who were divided into two sections, namely, the washing and the ironing sections. The respondent was employed in the latter and her duties included the ironing of bedsheets, pillow cases, towels and clothes. The laundry operators were also divided into senior and junior operators and at the time of the accident the respondent was considered a senior operator. The operators were supervised by a laundry supervisor who in turn reported to the manager in charge of the laundry room. The laundry manager was assisted on the technical side by an assistant engineer who in turn was assisted by two laundry technicians.

The respondent did her ironing work on pressing machines and there were several different models in the laundry room and they were all operated differently. According to the respondent, she did not receive any formal training when she joined the appellants. She was not placed on any training course nor was she given any instructions by the supervisor as to how to operate the machines. She learnt on the job from her fellow operators and this method of training workers continued right up to the date of the accident, with the respondent, as a senior operator, having some responsibility for training new operators. The allegation of the lack of formal training for laundry operators was denied by one Baldev Singh who was the laundry manager at the material time. He had joined the appellants in 1973 as a trainee supervisor and had been promoted to an assistant laundry manager by

1975. He then left to join another hotel before rejoining the appellants in 1981 as a laundry manager. According to him, all new operators who joined the appellants in 1977 were placed on a two-week training programme conducted by the supervisor or the manager. The learned Judge did not indicate which version he believed. In view of the fact that Baldev Singh was not employed by the appellants when the respondent joined the hotel in 1977, we were inclined to prefer the respondent's evidence as to the lack of formal training for operators. We also found it crucial, for reasons that appear below, that, even if the version given by Baldev Singh was true, the formal training was sadly lacking in the important aspect of educating the laundry operators on the safe operation of the pressing machine. Baldev Singh said in his evidence:

> ... We normally do not highlight the safety features of the 'machines because they come with safety features. Because of the presence of safety features we do not tell them what not to do. We teach them to operate the machine.

The accident occurred when the respondent was pressing a T-shirt on a hot steam press machine made by a company known as Ibis Hoffman (the laundry press). In order to press a T-shirt, the respondent would normally have placed it on the top of the ironing board and then lowered a cover piece known as the head buck on to the ironing board. As designed by the manufacturer, the head buck would be lowered when two black buttons on the right side of the laundry press were simultaneously depressed together with a green button on the left side. This simultaneous action kept both of the operator's hands away from the ironing board as the head buck was lowered and prevented any possibility of the operator's hands coming into contact with the head buck. This was important as the head buck was heated and it was not disputed that the three button system was the safety feature of the laundry press machines. After the head buck was lowered, the operator would then release steam by using either a hand pedal or a foot pedal or both. After pressing the garment, the operator would release the head buck by depressing a red button on the side of the machine.

Unfortunately, as we shall see later, this system as designed by the manufacturer had been altered and, on the day of the accident, when she had placed the T-shirt on the top of the ironing board and was smoothening out the material with her right hand, the head buck came down suddenly. The heat of the head buck scalded her right hand badly. Her efforts to raise the head buck by pressing the release button failed as that button would only work if the head buck was flat on the top of the affixed piece. As a result, the respondent's hand was stuck under the head buck for around ten minutes and the consequential injury has substantially reduced the function of her right hand. It was also said that the respondent was self-conscious of the disfigured hand and suffered from reactive depression and a severely restricted social life as a result.

The respondent subsequently brought this action against the appellants for damages for the injuries suffered, alleging that the injuries were caused by an unsafe system. This unsafe system was said to have been brought about by an alteration to the original two-handed operation (described above) of the laundry press and this alteration was alleged to have been in breach of the appellants' common law duties as employers in that they had:

(a) Failed to take any or any adequate precautions for the respondent's safety at work;

(b) Exposed the respondent to a risk of injury they had or ought to have foreseen;

(c) Caused the alteration that resulted in an unsafe system;

(d) Allowed the laundry press to be operated when it was unsafe to do so; or

(e) Failed to provide a safe or proper system of work.

Further, or alternatively, the respondent alleged that the appellants were in breach of the statutory duties imposed on them by the equivalent of the present ss. 20, 21 and 22 of the Factories Act (Cap 104).

In their defence, the appellants denied that the system of work they provided to the respondent was unsafe. They also denied all knowledge of the alteration and alleged that if the system of work had been altered, it had been altered without their authority, and the respondent was one of the workers who caused or consented to the alteration. Further, or alternatively, the appellants contended that the respondent had been contributorily negligent and/or in breach of her statutory duty under the present ss. 80 and 81 of the Factories Act. The appellants also pleaded the defence of *volenti non fit injuria.*

The evidence as to the alteration to the laundry press was that sometime in February 1983, several of the laundry operators had approached one Michael Tan, one of the laundry technicians, to see if he could alter the laundry press to make it work faster. He complied but reverted to the original system a few days later when the pneumatic compressor on the modified press did not work properly. Subsequently, two or three months before the accident, he again altered the laundry press at the request of several operators by rewiring it so that the head buck would be lowered by depressing only the red button, thus enabling the laundry press to be operated with only one hand, leaving the other hand free. Under the altered system, the head buck would be released when one of the black buttons was depressed. The laundry press was operated by this altered system at the time of the accident. The evidence also showed that although the respondent was not one of the workers who requested the alteration, she knew of it and had worked the altered operation on many occasions before the accident without any discomfort.

The learned Judge found the appellants to have been in breach of their duty to maintain a safe system of work. In his view, they could not delegate their duty to Michael Tan and they would have discovered the alteration had they exercised proper care and supervision. In the learned Judge's words:

> The alteration to the safe system had taken place two or three months before the accident. There were two or three supervisors and yet they were not aware that the machine had been tampered with. They did not stop the plaintiff (the respondent) from operating (the) machine. I think they ought to have known that the machine was defective.

The learned Judge rejected the defences of contributory negligence and *volenti non fit injuria* and accordingly found the appellants wholly liable and gave the respondent interlocutory judgment, with damages to be assessed if the parties could not agree on the quantum of damages. The appellants appealed to this Court.

Contributory Negligence

At the hearing before us, the appellants did not seek to dispute the question of liability. Their appeal was solely against the learned Judge's rejection of their claim that the respondent was in some way contributorily negligent. Counsel for the appellants contended that a reasonable person in the respondent's position would have acted differently in that a reasonable person would have reported the alteration by Michael Tan to the manager of the laundry room. Counsel also sought to show that because the respondent had continued working on the laundry press despite knowing that the altered operation was dangerous, it was an inevitable conclusion that she had been contributorily negligent.

We were unable to accept the assertion that the respondent knew that the modified operation was dangerous. The relevant portion of the evidence as to her state of knowledge occurred in her evidence in cross-examination and this read:

> After the modification in February 1983 I had used the modified machine. Except for the modification the functions of the machine were the same. I just carried on with the work. I did not feel discomfort operating the modified machine. As the machine was working well, I was happy to use it. My other colleagues were also operating the machine. We had no complaint about the modification ... The safest method is to use both hands before the head buck could come down or be released. Under the first (that is unmodified) system I would have to use both hands to release the head buck. Under the modified system I did not have to use both hands simultaneously. So it was unsafe and dangerous ... I did not find out why the modification was done. I did not then know it was dangerous not to work on both hands.

It was our view that a fair reading of the quoted passages showed that it was only on hindsight that the respondent knew that the modified operation was dangerous. In addition to the language of the quoted passages, it was also significant that the safety feature of the laundry press had never been highlighted to the operators in general and the respondent in particular. This was clear from the lack of formal training or, alternatively, from the failure of the appellants, as shown by the evidence of Baldev Singh, to educate the operators on the safety features of the machines on which they did their work. Since the respondent had never known the safety feature of the machine, she could not possibly have realised that it had been removed. We should further add that there was a particular feature of the workings of the laundry press which was not explained to and therefore within the knowledge of the respondent. It was that the head buck could not be released at all unless it was resting on a completely flat surface. This feature was responsible for the respondent's hand being stuck against the head buck and burnt for ten minutes.

Since the respondent did not subjectively know that the altered operation was dangerous, we considered whether a reasonable person in her position would have recognised the danger. The answer to such a question naturally depends on the facts and circumstances of each case, Here, the modification was made by a technician in the appellants' employ. This was a person who was responsible for the machinery in the laundry room and it would have been reasonable for the respondent to have relied on his judgment as to the operation of the machine. This was especially so given the education level of the respondent which could be taken as fairly representative of the average education level of the laundry operators. In view of this, we thought that it would not be reasonable to have expected her to have known of the danger posed by the altered system. We were also of the view that it would be unrealistic to expect an operator in the respondent's position to have dissented vigorously and have stopped work or have complained to the laundry manager or assistant engineer. We did not think that it was reasonable to expect an operator to make an adverse report against someone higher than he in the hierarchy of the organisation, least of all when the subject-matter of the report was a mechanical matter in which even the laundry manager was assisted by the technician. We found the principle set out by the House of Lords in the well-known case of *Smith v. Baker & Sons* [1891-4] All ER Rep 69, cited on behalf of the respondent, helpful with regard to this aspect of the appeal. The decision concerned whether an employer could rely on the defence of *volenti non fit injuria* where the employee knew of the danger involved in the work undertaken. The principle is well summarised in the headnote to the report:

> When an employee undertakes to do work which is intrinsically dangerous notwithstanding that reasonable care has been taken to render it as little dangerous as possible he voluntarily subjects himself to the risks inevitably accompanying it, and, if he suffers, the doctrine of

> *volenti non fit injuria* is open to his employer in defence to any claim made by him. But where a risk to the employee has been created or enhanced by the negligence of the employer in not providing a safe system of work the mere continuance by the employee in his service with knowledge of the risk does not preclude the employee, if he suffers from such negligence, from recovering in respect of the employer's breach of duty. Whatever the dangers of the employment which the employee undertakes, among them is not to be numbered the risk of the employer's negligence and the creation or enhancement of danger thereby engendered, unless the employee specially agrees to take that risk.

The latter part of the principle was relevant here and the rationale for that part was stated by Lord Herschell in the following terms (at p. 88):

> Where, then, a risk to the employed, which may or may not result in injury, has been created or enhanced by the negligence of the employer, does the mere continuance in service, with knowledge of the risk, preclude the employed, if he suffers from such negligence, from recovering in respect of his employer's breach of duty? I cannot assent to the proposition that the maxim *volenti non fit injuria* applies to such a case, and that the employer can invoke its aid to protect him from liability for his wrong. It is quite clear that the contract between employer and employed involves on the part of the former the duty of taking reasonable care to provide proper appliances and to maintain them in a proper condition, and so to carry on his operations as not to subject those employed by him to unnecessary risk. Whatever the dangers of the employment which the employed undertakes, among them is certainly not to be numbered the risk of the employer's negligence, and the creation or enhancement of danger thereby engendered. If, then, the employer thus fails in his duty towards the employed, I do not think that because he does not straightaway refuse to continue his service, it is true to say that he is willing that his employer should thus act towards him. I believe it would be contrary to fact to assert that he either invites or assents to the act or default which he complains of as a wrong, and I know of no principle of law which compels the conclusion that the maxim *volenti non fit injuria* becomes applicable.

We agreed with the rationale stated and were of the view that, although it was stated in the context of the defence of *volenti non fit injuria,* the rationale was of value, in most cases, to the defence of contributory negligence as well. In our view, the mere continuance in a dangerous situation created by the employer after the commencement of employment does not require of an employee an alertness out of proportion with the status of his job. It would not be fair to expect him to assume the responsibility of supervision which rightfully falls on the employer. The obligation cast upon the employee is to take such degree of care as a reasonable person in his position would take for his own safety and in determining what a reasonable person would do, a Court has to look at the average level of education of an employee in that particular job and the status of that particular job. Where the status of the job imposes no duty of supervision, and the employee has neither the educational qualifications nor the training to appreciate the dangers of his work, the law does not impose upon him the obligation which Counsel for the appellants argued for.

Counsel for the appellants argued that the decision in *Smith v. Baker & Sons* was decided at a time when the employee was not knowledgeable about machines and work procedure and that the decision in *Imperial Chemical Industries Ltd. v. Shatwell* [1964] 2 All ER 999 indicated an acknowledgment by the same Court that workers have to bear a certain amount of responsibility for their own safety. The decision in *Shatwell* was, of course, a significant development, as it recognised that the defence of *volenti non fit injuria* could be successfully raised, in certain circumstances, against a claim based on a breach of statutory duty when it had been thought that the defence was not applicable to such a claim. The circumstances were, however, very limited: an employer could rely on the defence where his liability was vicarious and the plaintiff employee had combined with the employee at fault to deliberately

disobey the statutory rule. It ought to be observed that, in *Shatwell,* the employees were of the same employment status and it was perfectly sensible that an employer should not be liable in those circumstances. Moreover the House of Lords in *Shatwell* did not disapprove *Smith v. Baker & Sons;* in fact, their Lordships quoted from the judgments in the latter with approval and did not indicate that they were in any way departing from the decision in that case. Counsel for the appellants was also unable to cite any authorities criticising or departing from *Smith v. Baker & Sons* and we were not convinced that the economic realities of work have changed significantly enough to undermine the basis of the principle.

Counsel for the appellants also drew our attention to the fact that about a month before the accident, the laundry manager, after discovering that someone had stuck a comb to one of the buttons on a machine in the laundry room, had warned the technicians not to alter the machines. We did not find this fact of much relevance in considering whether the respondent was contributorily negligent, simply because it did not show that the respondent knew that the technicians had been warned not to alter the machines nor did it show that she knew of the dangers of tampering with the machine. If the incident was at all of relevance, it would have been adverse to the appellants as it clearly emphasised the need for constant and proper supervision.

Counsel for the appellants also cited the cases of *Stavely Iron & Chemical Co. Ltd. v. Jones* [1956] AC 627 and *Williams v. Port of Liverpool Stevedoring Co. Ltd. & Ors.* [1956] 2 All ER 69 in support of his submissions. We did not find them of much assistance. In *Stavely Iron & Chemical Co. Ltd. v. Jones*, the House of Lords doubted if the principle set out in the case of *Caswell v. Powell Duffryn Associated Collieries Ltd* [1940] AC 152 that '... it is not for every risky thing which a workman in a factory may do in familiarity with the machinery that a plaintiff ought to be held guilty of contributory negligence ...' applied to a simple case of common law negligence as it did to a breach of statutory duty. We did not doubt that the policy reasons for applying the defence of contributory negligence narrowly in the case of a breach of statutory duty do not apply with the same force in a case of common law negligence, but we did not find that consideration of much help in this appeal since the evidence did not show that a reasonable operator in the respondent's position would have appreciated the risk created by the altered operation. Moreover, as stated above, we did not think that it would have been reasonable to have expected a reasonable operator in the respondent's position to have stopped working.

Counsel for the appellants relied heavily on the case of *Williams v. Port of Liverpool Slevedoring Co. Ltd.* [1956] 2 All ER 69. Reference need only be made to the headnote to the report which reads:

> The plaintiff was one of a gang of six men of equal status employed by the first defendants, a stevedoring company, in unloading bags of sodium carbonate from a barge. The gang were directed by the hatch foreman who was in charge of the operation and was also an employee of the stevedoring company to follow the usual and safe method of unloading, which at first they did. When the hatch foreman left to attend to other duties, however, the gang adopted a different and dangerous method of unstowing the bags. This they continued despite further direction from the foreman on his return to level off bags to avoid danger. Subsequently the foreman gave a direct order to the plaintiff to take bags off the top tiers which the plaintiff said that he would do. He did not do it. Other warnings by the master and the mate of the barge were disregarded. Eventually a pile of the bags collapsed and injured the plaintiff. In an action by the plaintiff against the stevedoring company for damages for personal injuries caused by the negligence of the company,

Held: (i) each member of the gang owed a duty to the other members to take reasonable care in the work of unstowing and in the method of work employed; and for the negligence of the members of the gang other than the plaintiff in adopting an unsafe method of work the stevedoring company as their employers were vicariously liable, although the plaintiff tacitly consented to the method of working and that method was contrary to orders given to him and the other members of the gang ...

(ii) the plaintiff was guilty of contributory negligence and, as the plaintiff 's consent had been essential to the carrying out of the work by the dangerous method, his share of the responsibility was one-half and the damages recoverable would be reduced accordingly.

It is quite clear that the learned Judge in that case found that it was the deliberate disobedience of a direct order from a superior to the plaintiff that was the basis of the holding that the plaintiff was contributorily negligent. This was far removed from the facts of the present case as the evidence in this case did not show that there had been any express order conveyed to the respondent or any of the operators that the operation of the laundry press was not to be tampered with. In fact, the evidence of Baldev Singh (quoted above) showed that there had been no attempt even to draw the operators' attention to the safety features of the machines in the laundry room.

Other Matters

These considerations were sufficient to dispose of this appeal. There were, however, two other points raised by Counsel for the appellants that we wish to address. First, he submitted, somewhat surprisingly in view of his concession that the appellants were to some extent liable for the injuries suffered by the respondent, that the alteration by Michael Tan was outside the scope of his employment with the consequence that the appellants could not be liable for his negligence. While the submission may have had some force in view of the warning by the laundry manager after the discovery of the comb pressed into the button of one of the machines, we were of the view that, on the facts of this case, the appellants' duty to provide and maintain a safe system of work would have made the appellants liable even if the alteration was outside of the scope of his employment. We were of the view that the learned Judge was right to hold that the appellants would have been aware of the alteration had they had a proper system of supervision. The fact that there was a person who was supposed to ensure that the machines were operating safely cannot relieve the appellants as the duty to maintain a safe system of work is clearly non-delegable. Counsel in support of his argument cited the cases of *O'Reilly v. National Rail And Tramway Appliances Ltd.* [1966] 1 All ER 499 and *Hudson v. Ridge Manufacturing Co. Ltd.* [1957] 2 All ER 229 which established the proposition that an employer cannot be held vicariously liable for horseplay or isolated acts of wilful misbehaviour by one of his employees. We would agree with the general proposition but it was simply not applicable here as it was shown that the appellants knew of the previous interference but yet did not take any steps, beyond warning the technicians not to do it again, to prevent a reoccurrence. The matter would have been different if the appellants had either dismissed or disciplined the technician at fault and at the same time made it plain to the operators what the safety features of the machines were and that they were not to interfere with them.

Secondly, Counsel also argued strongly that the learned Judge had acquitted the appellants of any breach of statutory duty. We were unable to accept that this was so. The judgment of the learned Judge made no reference to breach of statutory duty even though that had been pleaded as an alternative cause of action and this was regrettable. However, it did not

equate to a finding that there had been no breach of statutory duty. In fact, on the facts before us, we were of the view that the appellants were clearly in breach of their absolute duty under s. 22 of the Factories Act (it being agreed that the laundry press was a machine within s. 3 of the Act) which provides:

> (1) Every dangerous part of any machinery, other than prime movers and transmission machinery shall be securely fenced unless it is in such a position or of such construction as to be safe to every person employed or working on the premises as it would be if securely fenced;
>
> (2) Subsection (1) shall not apply where the dangerous part of any machinery is made safe for persons employed or working on the premises by other equally safe means.

While the two-handed operation of the laundry press existed, the appellants had satisfied subsection (2) as this was as safe as fencing the machine. The removal of this safety feature clearly put the appellants in breach of their s. 22 duty. That being the case, the defence of contributory negligence to this breach had even less merit.

We accordingly dismissed the appeal with costs.

Also found at [1992] 1 CLJ 550